

Carol V. Gilden (admitted *pro hac vice*)
**COHEN MILSTEIN SELLERS &
TOLL PLLC**
190 South LaSalle Street
Suite 1705
Chicago, IL 60603
Telephone: (312) 357-0370
Email: cgilden@cohenmilstein.com

Nicole Lavallee (SBN 165755)
Jeffrey Miles (SBN 293869)
BERMAN TABACCO
44 Montgomery Street, Suite 650
San Francisco, CA 94104
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
Email: nlavallee@bermantabacco.com
jmiles@bermantabacco.com

*Attorneys for Lead Plaintiffs Sheet Metal Workers'
National Pension Fund and International
Brotherhood of Teamsters Local No. 710 Pension
Fund and Additional Named Plaintiff International
Union of Operating Engineers Pension Fund of
Eastern Pennsylvania and Delaware*

[Additional Counsel on Signature Page]

William Savitt (admitted *pro hac vice*)
John F. Lynch (admitted *pro hac vice*)
Noah B. Yavitz (admitted *pro hac vice*)
**WACHTELL, LIPTON, ROSEN &
KATZ**
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000
Email: WDSavitt@wlrk.com
JFLynch@wlrk.com
NBYavitz@wlrk.com

Jordan Eth (SBN 121617)
Mark R.S. Foster (SBN 223682)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522
Email: JEth@mofo.com
MFoster@mofo.com

*Attorneys for Defendants Bayer
Aktiengesellschaft, Werner Baumann, Werner
Wenning, Liam Condon, Johannes Dietsch, and
Wolfgang Nickl*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SHEET METAL WORKERS' NATIONAL
PENSION FUND and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
LOCAL NO. 710 PENSION FUND,
individually and as Lead Plaintiffs on behalf
of all others similarly situated, and

INTERNATIONAL UNION OF
OPERATING ENGINEERS PENSION
FUND OF EASTERN PENNSYLVANIA
AND DELAWARE, individually and as
Named Plaintiff, on behalf of all others
similarly situated,

Plaintiffs,

vs.

BAYER AKTIENGESELLSCHAFT, WERNER
BAUMANN, WERNER WENNING, LIAM
CONDON, JOHANNES DIETSCH, and
WOLFGANG NICKL,
Defendants.

Case No: 3:20-cv-04737-RS

CLASS ACTION

**STIPULATION AND
SCHEDULING ORDER**

Ctrm: 3 – 17th Floor
Judge: Richard Seeborg

1 Pursuant to Local Rules 6-2 and 16-2(e), the Parties respectfully request the following:

2 WHEREAS, the above-captioned case is currently pending before this Court;

3 WHEREAS, Court-Appointed Lead Plaintiffs Sheet Metal Workers' National Pension Fund
4 and International Brotherhood of Teamsters Local No. 710 Pension Fund ("Lead Plaintiffs"), along
5 with additional named plaintiff International Union of Operating Engineers Pension Fund of Eastern
6 Pennsylvania and Delaware (collectively, "Plaintiffs") filed an Amended Class Action Complaint on
7 January 19, 2021 (ECF No. 47);

8 WHEREAS, Defendant Bayer Aktiengesellschaft ("Bayer" or the "Company") and
9 Defendants Werner Baumann, Werner Wenning, Liam Condon, Johannes Dietsch, and Wolfgang
10 Nickl (together, the "Individual Defendants," and collectively with Bayer, the "Defendants") moved
11 to dismiss the Amended Class Action Complaint on March 22, 2021 (ECF No. 61);

12 WHEREAS, the Court denied Defendants' motion to dismiss on October 19, 2021, but held
13 that "unless and until Plaintiffs successfully amend the Complaint" certain "theories are foreclosed
14 as the case moves forward" (ECF No. 90);

15 WHEREAS, on December 17, 2021, Plaintiffs filed a motion for leave to file a Second
16 Amended Class Action Complaint (ECF No. 102) (the "Motion for Leave to Amend");

17 WHEREAS, Defendants do not intend to oppose the Motion for Leave to Amend, and have
18 consented to the filing of the Second Amended Class Action Complaint subject to a reservation of
19 their right to move for its dismissal;

20 WHEREAS, there is currently a hearing on the Motion for Leave to Amend scheduled for
21 January 20, 2022;

22 WHEREAS, Defendants intend to move to dismiss the Second Amended Class Action
23 Complaint;

24 WHEREAS, the full scope of discovery in this litigation cannot be determined until the Court
25 rules on Defendants' anticipated motion to dismiss, but the parties are currently scheduled to submit
26 a joint case management report addressing the discovery plan and schedule for this action by January
27 20, 2022, and to appear for an initial case management conference on January 27, 2022; and

28 WHEREAS, Plaintiffs conferred via email with Defendants and the parties mutually agreed
that as a matter of efficiency for both the parties and the Court, it would be beneficial to (1) adjourn

1 the hearing on the Motion for Leave to Amend; (2) temporarily adjourn and postpone the initial case
 2 management conference and related deadlines until after the Court has ruled on Defendants' motion
 3 to dismiss the Second Amended Class Action Complaint; and (3) set a briefing schedule for
 4 Defendants' motion to dismiss the Second Amended Class Action Complaint.

5 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties,
 6 that:

- 7 1. Defendants consent to the filing of the Second Amended Class Action Complaint,
 8 while reserving their right to seek dismissal pursuant to Rules 9(b) and 12(b)(6) of the
 9 Federal Rules of Civil Procedure, as well as the Private Securities Litigation Reform
 10 Act of 1995. Plaintiffs shall file the Second Amended Class Action Complaint within
 11 two (2) business days after the Court issues an order granting this stipulation.
- 12 2. The motion hearing currently scheduled for January 20, 2022 shall be adjourned as
 13 moot.
- 14 3. Defendants shall answer or move to dismiss the Second Amended Class Action
 15 Complaint no later than January 31, 2022.
- 16 4. If Defendants move to dismiss the Second Amended Class Action Complaint,
 17 Plaintiffs shall file opposition papers no later than thirty (30) days after the filing of
 18 Defendants' motion to dismiss.
- 19 5. Defendants' reply in support of any motion to dismiss the Second Amended Class
 20 Action Complaint shall be filed no later than fourteen (14) days after the filing of
 21 Plaintiffs' opposition to Defendants' motion to dismiss.
- 22 6. Subject to the Court's convenience and schedule, the initial case management
 23 conference currently scheduled for January 27, 2022 shall be continued until thirty
 24 (30) days after the Court has ruled on Defendants' motion to dismiss the Second
 25 Amended Class Action Complaint.
- 26 7. Without limiting the Parties' ability to seek to lift the stay of discovery in accordance
 27 with 15 U.S.C. § 78u-4(b)(3)(B), the Parties' obligations under subparts (a) and (f) of
 28 Rule 26 of the Federal Rules of Civil Procedure, Rule 16-9 of the Civil Local Rules,
 and Rule 3-5 of the ADR Local Rules shall currently be suspended until after the Court

has ruled on Defendants' motion to dismiss the Second Amended Class Action Complaint.

IT IS SO STIPULATED.

Dated: December 29, 2021

BERMAN TABACCO

By: /s/ Nicole Lavallee
Nicole Lavallee (SBN 165755)

Jeffrey Miles (SBN 293869)
44 Montgomery Street, Suite 650
San Francisco, CA 94104
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
Email: nlavallee@bermantabacco.com
jmmiles@bermantabacco.com

Liaison Counsel

Carol V. Gilden (admitted *pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
190 South LaSalle Street, Suite 1705
Chicago, IL 60603
Telephone: (312) 357-0370
Facsimile: (312) 357-0369
Email: cgilden@cohenmilstein.com

Steven J. Toll (admitted *pro hac vice*)
Susan G. Taylor (SBN 190753)
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave NW, Suite 500 East
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
Email: stoll@cohenmilstein.com
sgtaylor@cohenmilstein.com

Chris Lometti (*pro hac vice* forthcoming)
Benjamin F. Jackson (admitted *pro hac vice*)
Norhan Bassiouny (admitted *pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
88 Pine Street, Fourteenth Floor
New York, NY 10005
Telephone: (212) 838-7797
Facsimile: (212) 838-7745
Email: clometti@cohenmilstein.com
bjackson@cohenmilstein.com
nbassiouny@cohenmilstein.com

Lead Counsel

*Attorneys for Lead Plaintiffs Sheet Metal Workers'
National Pension Fund and International Brotherhood
of Teamsters Local No. 710 Pension Fund, and
Additional Named Plaintiff International Union of
Operating Engineers Pension Fund of Eastern
Pennsylvania And Delaware Local No. 542*

MORRISON & FOERSTER LLP

By: /s/ Jordan Eth
Jordan Eth (SBN 121617)

Mark R.S. Foster (SBN 121617)
425 Market St.
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522
Email: jeth@mofo.com
MFoster@mofo.com

William Savitt (admitted *pro hac vice*)
John F. Lynch (admitted *pro hac vice*)
Noah B. Yavitz (admitted *pro hac vice*)
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000
Email: WDSavitt@wlrk.com
JFLynch@wlrk.com
NBYavitz@wlrk.com

*Attorneys for Defendants Bayer Aktiengesellschaft,
Werner Baumann, Werner Wenning, Liam Condon,
Johannes Dietsch, and Wolfgang Nickl*

CERTIFICATE PURSUANT TO LOCAL RULE 5-1(i)(3)

I, Nicole Lavallee, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Nicole Lavallee
Nicole Lavallee

**ORDER GRANTING STIPULATION PURSUANT TO
STIPULATION, IT IS SO ORDERED.**

Dated: December 29, 2021


HONORABLE RICHARD LEEBORG
UNITED STATES DISTRICT JUDGE